

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re: Fresenius GranuFlo/NaturaLyte)
Dialysate Products Liability Litigation) No. 1:13-MD-02428-DPW
)
This Document Relates To:)
)
ALL CASES)

AGREEMENT CONCERNING DUPLICATE MDL CASES

As discussed with the Court during recent status conferences, the Parties have identified duplicate cases that were filed in various jurisdictions on behalf of the same Plaintiff.¹ The Parties agree that there should be only one case, pending in any jurisdiction, seeking damages for injuries to any particular Plaintiff. In order to address the duplicate cases that are pending in the MDL and/or other jurisdictions, and to ensure that the plaintiffs are given a reasonable opportunity to confer and resolve those duplicate filings, the Parties, through undersigned counsel, hereby agree as follows:

The Defendants have provided the Plaintiffs' leadership with a list of duplicate filings (hereinafter "Exhibit 1"). The provisions set forth below apply to the Plaintiffs identified on Exhibit 1.

1. Plaintiffs named in more than one case in this MDL proceeding, must file stipulations to address their duplicate MDL cases on or before December 16, 2015.
2. Where a single Plaintiff is named in more than one case pending in this MDL, the Plaintiff shall file a stipulation to consolidate his/her duplicate cases. The consolidated cases will thereafter proceed under the first-filed case number (which is not a decision concerning which counsel of record shall proceed to represent the Plaintiff).
3. Where a single Plaintiff is named in one case pending in this MDL and one or more cases pending outside this MDL, the Plaintiff must decide whether the MDL case will proceed. If the Plaintiff seeks to proceed with the MDL case, no further action need be taken in this proceeding, but the Plaintiff must, in cooperation with counsel for defendants, take appropriate steps to address the duplicate case(s) in the court(s) in which the duplicate case(s) is/are pending. If the Plaintiff seeks to dismiss the MDL case and proceed elsewhere, the Plaintiff must file a stipulation of dismissal reciting that the dismissal is without prejudice. The

¹ For purposes of this Agreement, the Parties incorporate by reference the definition of "Plaintiff" as set forth in the MDL Plaintiff Fact Sheets. "Plaintiff" is therefore "the person who was exposed to, or treated with, GranuFlo and/or NaturaLyte."

Parties agree that such a stipulation of dismissal would not result in an adjudication on the merits pursuant to Fed. R. Civ. P. 41(a)(2).

4. Any disputes concerning stipulations—including disputes between lawyers about which of multiple cases involving a single Plaintiff should proceed—shall be heard and resolved by Judge Woodlock or another presiding judge if all the duplicate cases fall outside the MDL.

5. Each party shall bear his/her or its own attorney fees and costs in filing such stipulations. Defendants reserve their rights to oppose any motion seeking the without prejudice dismissal of a duplicate case on Exhibit 1, and to seek all available remedies against any Plaintiff who has not taken appropriate steps to address his/her duplicate filings by December 16, 2015.

6. To the extent that Defendants notify and identify to Plaintiffs' leadership additional duplicate filings not on Exhibit 1, then those additional Plaintiffs shall have three months from said date of notification to pursue the remedies set forth in this Agreement.

Respectfully submitted,

/s Anthony Tarricone

Anthony Tarricone
KREINDLER & KREINDLER LLP
855 Boylston Street Ste 1101
Boston, MA 02116
(617) 424-9100
atarricone@kreindler.com

Plaintiffs' Liaison Counsel
Chair, Plaintiffs' Executive Committee

/s Leigh Anne Hodge

Leigh Anne Hodge
Kevin C. Newsom
BRADLEY ARANT BOULT CUMMINGS LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
(205) 521-8000
(205) 521-8800 (fax)
lhodge@babc.com
knewsom@babc.com

William H. Kettlewell (BBO # 270320)
Maria R. Durant (BBO # 558906)
Sara E. Silva (BBO # 645293)
COLLORA LLP
100 High Street, 20th Floor
Boston, MA 02110
(617) 371-1000
(617) 371-1037 (fax)
wkettlewell@collorallp.com
mdurant@collorallp.com
ssilva@collorallp.com

James F. Bennett
Megan S. Heinsz
DOWD BENNETT LLP
773 Forsyth Blvd., Suite 1410
St. Louis, MO 63105
(314) 889-7300
(314) 889-7302 (fax)
jbennett@dowdbennett.com
mheinsz@dowdbennett.com

Juanita Brooks
FISH & RICHARDSON
12390 El Camino Real
San Diego, CA 92130
(858) 678-5070
(858) 678-5099 (fax)
brooks@fr.com

*Counsel for Fresenius Medical Care Holdings,
Inc., Fresenius Medical Care Holdings, Inc.
d/b/a Fresenius Medical Care North America,
Fresenius USA, Inc., Fresenius USA
Manufacturing, Inc., Fresenius USA
Marketing, Inc., and Fresenius USA Sales, Inc.*

/s *Charles Cummings*

Charles Cummings
Baker & McKenzie LLP
452 Fifth Avenue
New York, NY 10018
Telephone: 212-891-3534
Facsimile: 212-310-1634
Charles.Cummings@bakermckenzie.com

*Counsel for Fresenius Medical Care AG & Co.
KGaA, Fresenius Medical Care Management,
AG, Fresenius SE & Co KGaA, and Fresenius
Management SE*

Dated: September 16, 2015